



No. 225 and 387.

By. of Reed & Thacher on Question by
Court.

Office Supreme Court U. S.
FILED

MAR 10 1900

JAMES H. BECK
Clerk.

Supreme Court of the United States.

Filed Mar. 10, 1900.

OCTOBER TERM, 1899.

SHIRLEY T. HIGH ET AL.,

Appellants,

vs.

No. 225.

F. E. COYNE, Collector, etc., ET AL.,

Appellees.

EBEN J. KNOWLTON ET AL.,

Plaintiffs in Error,

vs.

No. 387.

FRANK R. MOORE, Collector, etc., ET AL.,

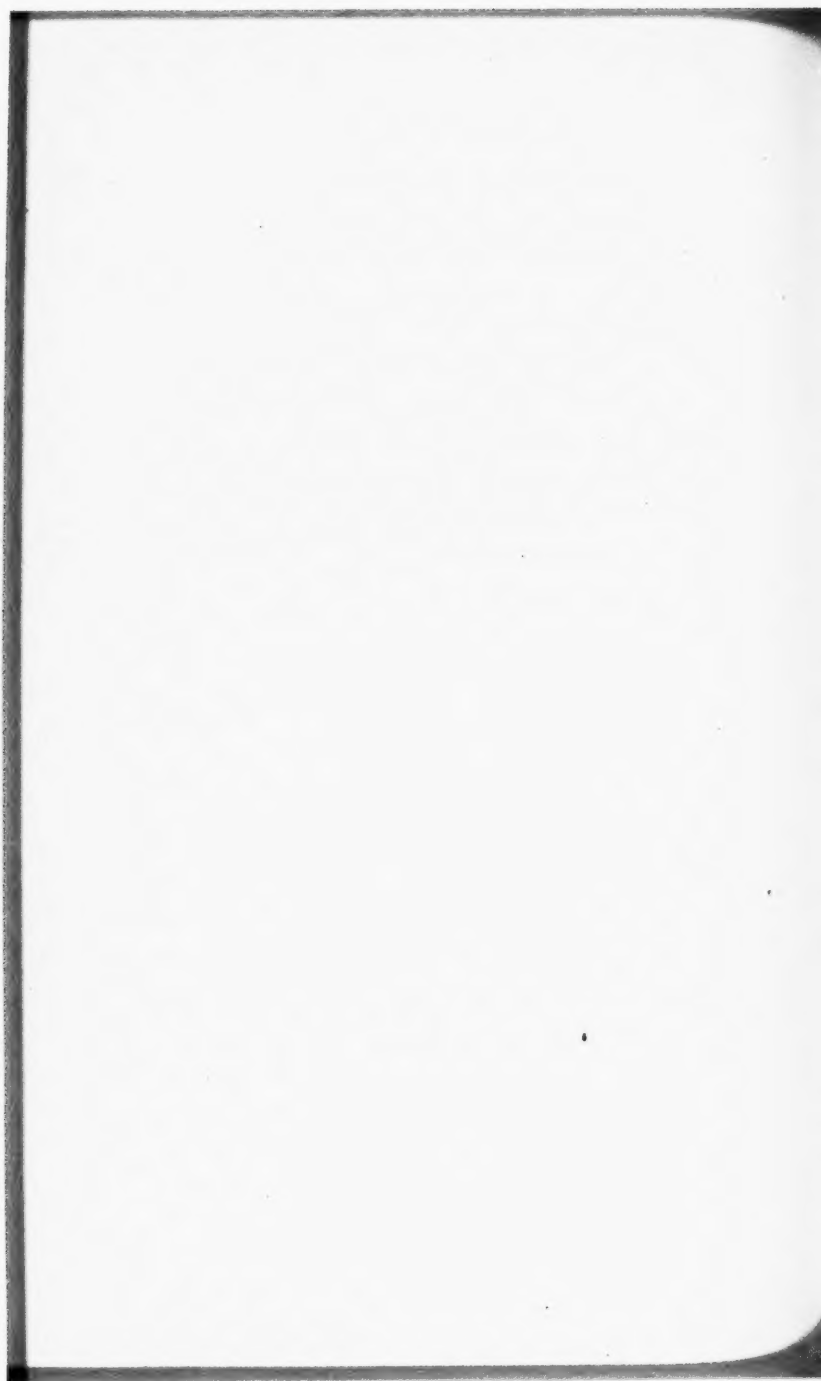
Defendants in Error.

Brief in Response to Suggestions of the Court by
its Order of February 26, 1900.

THOMAS B. REED,

THOMAS THACHER,

Of Counsel.



Supreme Court of the United States.

OCTOBER TERM, 1899.

SHIRLEY T. HIGH ET AL.,
Appellants,

vs.

F. E. COYNE, collector, etc., *et al.*,
Appellees.

No. 225.

EBEN J. KNOWLTON ET AL.
Plaintiffs in Error,

vs.

FRANK R. MOORE, collector, etc.,
et al.,
Defendants in Error.

No. 387.

Brief in Response to Suggestions of the Court by its Order of February 26, 1900.

By said order the Court suggests that counsel submit briefs "on the construction of the Act under consideration, in respect of the question whether the tax or duty imposed on each of the legacies is measured by the volume of the estate, or by the amount of the legacy."

At the end of the first paragraph of Section 29, immediately preceding subdivision marked "First" are

these words : " *Where the whole amount of said personal property shall exceed in value ten thousand dollars and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be :* " and after the five subdivisions are the words : " *Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars,*" &c.

We understand the question offered for discussion to be : What is the meaning of the words " the whole amount of said personal property," and of the later words " the amount or value of said property," in these clauses of the act ? As applied to an estate passing by will, do they mean the volume of the personal estate or a single legacy ? Clearly, as it seems to us, they mean the volume of the personal estate, the intention being that, where the *whole amount of the personal property in an estate* exceeds \$25,000, the stated rates shall be multiplied by one and a half, or, if it exceeds \$100,000, such rates shall be multiplied by two, and so on.

It is quite important to note that the act (Section 29 of the War Revenue Act) speaks of but a *single tax or duty* imposed upon a single person or group of persons. It is drawn as having in mind a single estate or trust and a single tax or duty with respect thereto. It attaches with respect to any estate within the description, of course, but the use of the singular number must not be overlooked in construing it. The subject of the sentence with which this sentence begins (or, perhaps, it should rather be said, which makes up the section) is : "*Any person or persons* having in charge or in trust, as administrators, executors or trustees, any *legacies* or distributive *shares* arising from personal property." It is not "*all persons* having in charge legacies or distributive shares." If it were, this plural might be thought to be used distributively, and the conclusion might be permitted that the same use of the plural was intended in "*legacies or distributive shares.*" "*Any person or persons* having in

charge or in trust * * * any legacies or distributive shares" means either a sole executor, administrator or trustee, or two or more executors, administrators or trustees acting together with respect to a *single estate*. This seems clear enough while attention is confined to the subject. Is not all doubt removed by the predicate, which is "shall be, and hereby are, made subject to a tax or duty?" A single tax or duty may be imposed upon several persons with respect to a single estate held by them, but certainly not with respect to different estates.

Note also that Section 30 provides that "*the* tax or duty aforesaid shall be a lien and charge upon *the* property of every person who shall die, etc." It is still a single tax or duty which is to be a single lien and charge upon the whole of the property of the deceased.

It is true that in Section 30, after the sentence quoted above, are these words: "And every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to the beneficial interest therein (*sic*), shall pay * * * the amount of the duty or tax assessed upon such legacy or distributive share." This may seem to suggest the idea of several taxes upon the several legacies. But the words "such legacy or distributive share," in the singular, finds nothing in the previous language of the act to which to refer. Evidently there is nothing in the preceding language of Section 30, and in Section 29 there is but one reference to "legacies or distributive shares," and that is in the beginning and is in the plural. Apparently the first part of Section 30 is not as it was originally written, but it originally contained something to explain "therein" and and "such legacy or distributive share," which being stricken out leaves them unintelligible. The whole act is so badly drawn that it might well be argued, that it should be declared void because "insensible." It is not to be construed on the

theory that the draughtsman had throughout a clear conception of its purpose. The general lines may be clearly made out, as that a single tax or duty was intended to be imposed upon the person or persons having any estate in charge. That accords with the language with which Section 29 begins and, also, with the purpose as shown throughout the two sections. One or two inconsistent forms of expression cannot change the meaning in this respect. Can it be supposed that in the words last quoted every executor, administrator or trustee was directed to pay anything less than the entire tax or duty calculated upon all legacies or distributive shares in the estate? Before distribution to the legatees, the executor is to pay the duty or tax. This means one payment of a single amount. Read all through the section. There is nothing looking to several payments with respect to several legacies. The schedule or list is to contain "the names of *each and every person* entitled to any beneficial interest therein," and the tax "thereon," that is, the amount made up according to the schedule, showing *all legatees*, is to be immediately paid. The sentence beginning, "And in case such executor, administrator or trustee shall refuse or neglect to pay the aforesaid duty," very clearly refers only to a single tax or duty in respect to any one estate. The collector is authorized to assess "the duty;" and to commence proceedings and subject "such property or *personal estate*" to be sold upon "*the judgment or decree*" of the court, and from the proceeds pay "such tax or duty;" and if a portion is sold the rest is discharged from the lien. This is all contrary to the thought that the intention was to impose several taxes or duties to be separately dealt with.

There is but one other bit of language which seems to suggest several taxes or duties upon, or with respect to, the several legacies, and that is the proviso at the end of subdivision "Fifth" in Section 29: "*Provided*, that all legacies or property passing by will, or by the

laws of any State or Territory, to husband or wife of the person died possessed, as aforesaid, shall be exempt from tax or duty." This occurs in that part of the act fixing the rates by which the tax or duty shall be figured. The only purpose of the proviso was, of course, to exclude legacies or property passing to husband or wife in calculating the tax. The implication in the words "shall be exempt from tax or duty" should not be permitted to override the words in the body of this section and the reading of the two sections as a whole. This is mere looseness.

In the light of the foregoing, the meaning of the words "the whole amount of such personal property" seems to us to become clear. Simplify the language by reading it as applied to a single executor under a will and Section 29 will read at the beginning as follows: "That any person having in charge, as executor, any legacies arising from *personal property*, where the whole amount of *such personal property* shall exceed \$10,000 in value, passing * * * by will, * * * shall be and is hereby made subject to a duty or tax." The legacies referred to are all the legacies given by the will—or, in other words, all the legacies which such executor has in charge. It would be absurd to change "legacies" to the singular, because a single person is the subject. A sole executor usually has in charge several legacies. So, if we change the form and read through with two or more persons, executors of the same will, as the subject, "any legacies" still means all the legacies under that will. *All legacies* are intended to be mentioned here, whether there is one executor or more than one, the whole section being framed as speaking of but a single estate and a single tax or duty.

Now, the personal property from which the legacies under any will arise is all the personal property of the estate. Exceptions to this rule are so rare that they need not be considered for purposes of construction. Hence, "personal property," where these words are first

used in this section means the whole personal estate ; so that if the limiting clause read simply " where such personal property exceeds \$10,000," it would, with reasonable certainty, mean " where the volume of personal property in the estate exceeds \$10,000." But somebody, apparently, thought that this might be doubted, and so the clause was made to read, not simply " where such personal property exceeds," but " where *the whole amount of* such personal property exceeds." These words, " the whole amount of," seem to have been intended to remove all doubt. From the suggestion of the Court it would appear that the doubt has arisen again. We submit that it cannot linger in the light which comes from the consideration that the section speaks of a single tax or duty upon or with respect to a single estate.

We presume it will not be questioned that whatever is the meaning of the words " the whole amount of such personal property as aforesaid," in the beginning of the section, the same meaning must be given to the words " the whole amount of said personal property," later on in the clause which we are asked to construe. And so we submit that in stating the minimum rates, according to relationship, as applicable " where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars," reference is, with respect to any particular estate, to the volume of the personal property in such estate, and that these rates are multiplied according to the size above \$25,000 of such volume of personal property.

The words in the first part of Section 29 " or any personal property or interest therein transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor " were apparently put in as an afterthought, and they are not skillfully fitted in. This is one of many blunders in composition and the use of language in this act. But it seems clear that with re-

spects to legacies the section has precisely the same meaning as if these words were omitted. For purposes of construction, as applied to legacies, they should be disregarded.

The view we take finds further support in the language of subdivision first: "Where the person or persons are entitled to *any* beneficial interest *in such property*." Each legatee or distributee is entitled to *some* beneficial interest in all the personal property. If any particular part may be considered as applied to pay his particular legacy, he has rather *the* beneficial interest in that. "*Any* beneficial interest" implies that *such property* is, or at least may be, larger than the interest. See, also, the further words fixing a certain rate for each dollar of the value "of *such interest in such property*."

See, also, the provision in Section 30 for sale of "*personal estate* or any portion of the same" in case of failure to pay the tax, and other provisions of that section hereinbefore referred to.

The order of the Court speaks of "the tax or duty *imposed on each of the legacies*." The question put is, whether the tax *so imposed* is measured by the volume of the estate, or by the amount of the legacy. We have sought to show that the personal property, which is in part the measure of the tax imposed by the Act, is the volume of the personal estate, without, up to this point, discussing upon what the tax is imposed. But we cannot well omit all comment upon the assumption contained in the question as put by the Court. Silence might be taken as assent. If that assumption is correct, that the act taxes each legacy, we see no possibility of escape from the conclusion that whether in form laid upon the legatees, as such, or upon the legacies, it is a tax on property, a direct tax, and therefore void, under the decision in the Income Tax

Case. We cannot believe, therefore, that the question put by the Court was worded with that idea in view. To assume that would seem to make the question itself wholly useless. There is no need of puzzling over the measure, if the tax is a direct tax and void. It would seem that the question, what is taxed by this law, or, in other words, what is the nature of the tax imposed, must still be open. Perhaps we are right in thinking that the Court is seeking aid in determining the nature of the tax, with a view to deciding the question of constitutionality. The measure of a tax often tells its real character. Is a tax imposed upon each legacy? Then a legacy of \$20,000 is taxed differently, according as it comes from an estate of \$10,000, \$25,000, \$100,000, \$500,000 or \$1,000,000. This is wholly unreasonable. There is no proper relation between the property taxed and the measure of the amount. Is the hypothesis correct? Although the theory that each legacy is taxed seems to lead to the conclusion which we seek—namely, a declaration that the act is unconstitutional, we do not think it correct. It seems to us, from the considerations hereinbefore set forth—especially the fact that the law seems to impose a single tax or duty with respect to each estate, and that the amount of the tax depends in part upon the amount of the entire personal estate—that the tax is a succession tax, a tax on the transmission of property at death, such as was before this Court in *Magoun vs. Illinois Trust and Savings Bank* and *United States vs. Perkins*. We cannot believe that this tax or duty, imposed as a single tax or duty with respect to the entire personal estate, measured by the entire personal estate, to be paid by the executors and charged in their general account, and made a lien and charge upon the entire personal estate, could have been intended by Congress, or can be regarded by the Court, as anything but a succession tax, or a tax upon the transmission of property on the death of the owner.

But if the Court should accept this view, rather than that which its question indicates, it must still, we submit, reach the same final conclusion and hold the act unconstitutional and void.

In *Magoun vs Illinois Trust and Savings Bank*, the Court say :

“ An inheritance tax is not one on property, but one on the succession. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege—and therefore the authority which confers it may impose conditions upon it.”

The law referred to here is State law. The Federal Government has nothing to say as to what shall become of property when the owner dies. But the power of the States is, according to the decisions of this Court, absolute and unqualified. The States, as a rule, pass property upon the death of the owner according to wills made by the owner or according to its statute of distribution in case of intestacy. What the State does by these laws is substantially to grant the property, all of which, according to the decisions of this Court, it might take to itself if it chose, to those named as donees in wills or to those designated in its statute of distributions. If the Federal Government is permitted to tax the succession, the transmission of property in case of death, it is permitted to destroy *pro tanto* the grant of the State, in respect to which it is said the power of the State is absolute and unqualified ; to interfere with the State in the exercise of its own exclusive functions. This cannot be. Such a tax cannot stand under the Constitution as interpreted by this Court. The Federal Government may tax property granted by the State after it has been received by the grantee. Such a tax is a direct tax, requiring apportionment. But it cannot in any way tax a grant from the State, or any exercise of the power of the State. And a tax upon the succession, or upon the devolution of property at the death of the owner, is substantially a tax upon a grant from the State, or upon a transfer operating wholly by force of State law.

That a State can tax only what is within its jurisdiction is said to be one of those "limitations upon the powers of all governments, without any express designation of them in their organic law ; limitations which inhere in their very nature and structure" (U. S. vs. R. R. Co., 106 U. S., 154).

A thing is as really without the jurisdiction of the Federal Government, if the State has exclusive jurisdiction over it, as is real estate wholly outside of the United States.

So it was held that the Federal Government could not tax the salaries of State Judges (Collector vs. Day, 11 Wall., 113).

This tax being a tax upon the succession or the transmission of property under State laws in case of death, and these matters being under the absolute and unqualified jurisdiction of the States, the act is unconstitutional and void under the doctrine stated by Chief-Justice MARSHALL in *McCulloch vs. Maryland*, 4 Wheat., 429, as follows :

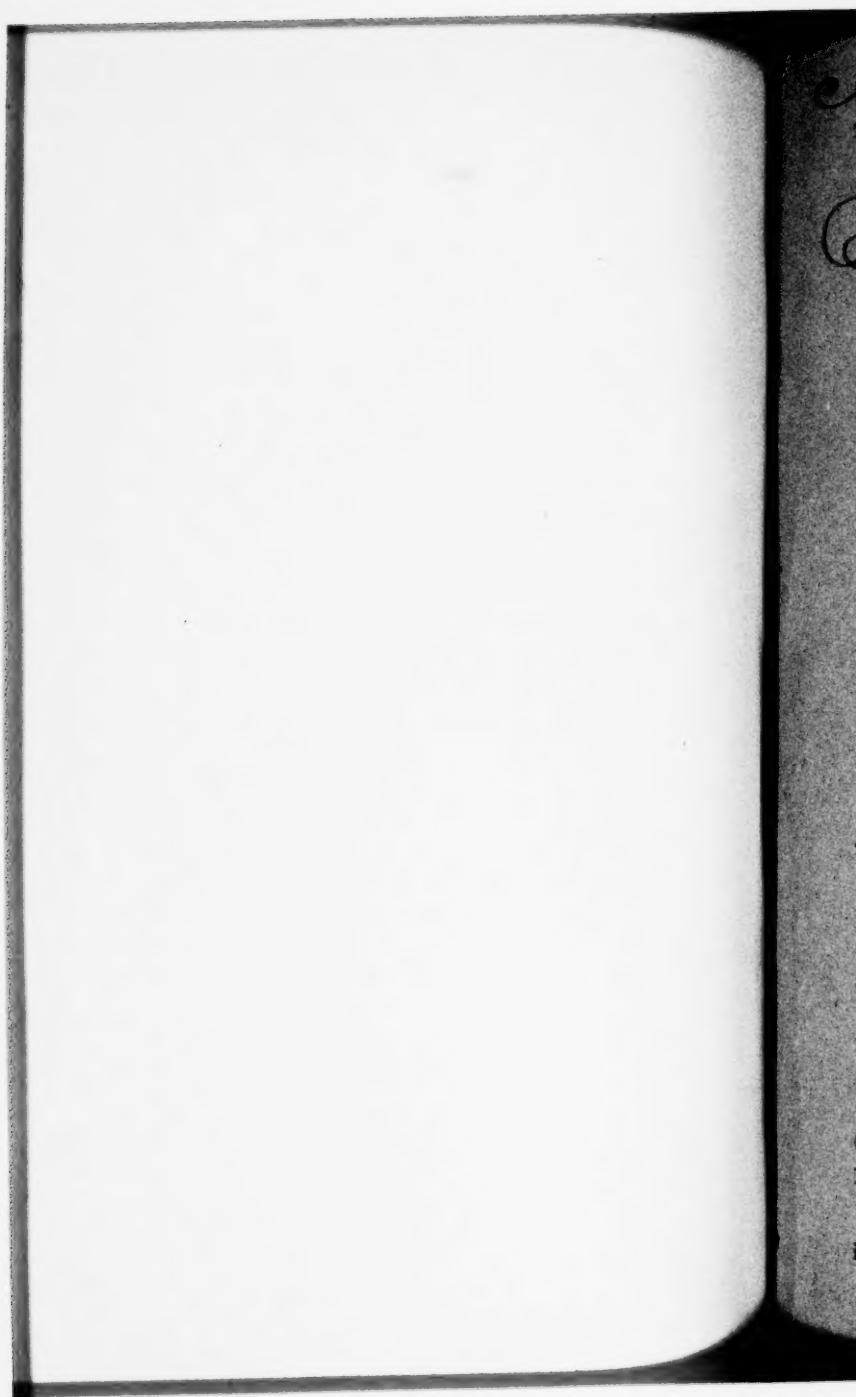
" All subjects over which the sovereign power of a State extends are objects of taxation ; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident."

THOMAS B. REED,

THOMAS THACHER,

Of Counsel for Appellants and Plaintiffs in
Error.





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FILED

MAR 13 1900

CLERK

Supreme Court of the United States.

Exs. of Carlisle heard on
Question by

No. 286.

SHIRLEY T. HIGH ET AL.,

Filed Mar. 12, 1900.

F. E. COYNE, Collector, &c., ET AL.,

Appellants.

No. 287.

EBEN J. KNOWLTON ET AL.,

Plaintiffs in Error,

vs.

FRANK R. MOORE, Collector, &c.,

Defendant in Error.

Additional Brief for Appellants and Plaintiffs
in Error on Question Submitted
by the Court.

J. G. CARLISLE,

For Appellants and Plaintiffs in Error.

Counsel:

WHINKLER H. PECKHAM, PETER B. OLNEY, WILLIAM EDMOND
URTIS, CHARLES H. OTIS, WARD B. CHAMBERLIN and GEORGE
CHAMBERLIN.

Also Brief of HENRY M. WARD, for Appellants and Plaintiffs
in Error.



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PREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

SHIRLEY T. HIGH ET AL.,
Appellants,

vs.

E. COYNE, Collector, &c., *et al.*,
Appellees.

No. 225.

EBEN J. KNOWLTON ET AL.,
Plaintiffs in Error,

vs.

HANK R. MOORE, Collector, &c.,
Defendant in Error.

No. 387.

Additional Brief for Appellants and Plaintiffs in Error on Question Submitted by the Court.

The question propounded by the Court in these cases is "whether the tax or duty imposed on each of the legacies is measured by the volume of the estate or by the amount of the legacy."

As we understand the act under consideration, the thing to be ascertained for the purpose of determining, first, whether the property is subject to any tax whatever, and, secondly, to determine the rate of the tax imposed, is the "whole amount" of the personal property held in charge or trust, from which the legacies and distributive shares arise; not the amount or value of any one share, but the aggregate amount or value of all the shares. Upon this point, the language of the act is so plain that there seems to be no room for construction. It reads:

"That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares *arising from personal property*, where *the whole amount of such personal property as aforesaid* shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, (or any personal property or interest therein, transferred by deed, grant, bargain, sale or gift, made or intended to take effect, in possession or enjoyment, after the death of the grantor or bargainer), to any person or persons, or to any body or bodies, politic or corporate, in trust or other-

wise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows," etc., etc.

The clause we have put in parenthesis has no bearing on the question to be discussed. It was inserted for the purpose of subjecting to taxation personal property which the former owner had disposed of in his lifetime by deed, grant, etc., to take effect after his death, and which, therefore, might not be held in charge or trust by the administrator, executor or trustee. Whether property so situated ought or ought not to be included in the valuation is not a material question in these cases.

It is clear, we think, that the words "personal property as aforesaid" refer to the personal property held in charge or trust and from which all the shares arise; but, if we assume that the words "as aforesaid" relate back to the legacies or distributive shares, the meaning would not be changed in the least. With that construction, the clause would be understood as if it read, "Where the *whole amount* of such legacies or distributive shares shall exceed the sum of ten thousand dollars in actual value," and it would still be plain that the whole amount—the aggre-

gate amount—of all the legacies and distributive shares must be ascertained in order to determine whether the tax or duty shall be imposed; and, as the whole amount of the legacies and shares is precisely the same as the whole amount of personal property out of which they arise, the meaning and effect of the act are the same under either construction. The words “such personal property as aforesaid” certainly refer to either *all* the legacies and distributive shares, or to *all* the personal property held in trust or charge out of which they arise. There is nothing else to which they can possibly relate, and in either case it is the whole amount or value that is to be ascertained.

If the whole amount of the legacies or shares, or the whole amount of the personal property from which they arise (which is the same thing), exceeds ten thousand dollars in value, then, according to the subsequent provisions of the act, the shares are taxable at progressive rates which are regulated by the value of that whole amount. After the clause which we have quoted, the act proceeds to classify the beneficiaries, and prescribe the rates of taxation according to the degrees of relationship and the value of the

"whole amount of said personal property." The first clause relating to this subject is as follows : "Where the *whole amount of said personal property* shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be," etc., etc. To what personal property does this provision relate? Unquestionably it relates to the same personal property designated in the clause first quoted ; that is, to either the whole amount of the legacies and distributive shares held in charge or trust, or to the whole amount of the personal property out of which they arise, and, as we have seen, the effect is the same, no matter which construction is given to it. No grammatical or legal construction can be put upon it that would make it relate to the separate share of a legatee or distributee, for the obvious reason that there are no words intervening between this clause and the first part of the section conducing to show that the meaning of the phrase, "whole amount of said personal property," was intended to be changed in any respect. If it had been intended to regulate or measure the rate of taxation by the amount or value of a single share or legacy, the language of the act is as obscure and inappropriate as could

possibly have been selected. In the first place, if such had been the intention, the words "whole amount of" were unusual and unnecessary; and, in the second place, the words "said personal property" would not have been used. There was nothing in the nature of the subject or in the rules of construction to require, or even excuse, the use of such phraseology in describing a single legacy or distributive share. A provision that "where any legacy or distributive share shall exceed in value ten thousand, and shall not exceed in value the sum of twenty-five thousand, dollars," etc., etc., would have expressed the meaning so clearly that no question could have arisen; and, if it had been the intention to make the rate of taxation dependent upon the values of the separate shares, this, or some similar language, would undoubtedly have been used. But, instead of this, the words "whole amount of such personal property as aforesaid," "whole amount of said personal property" "such property," "said property," and "amount or value of said property," are used *ex industria* throughout the entire act, while the legacies and distributive shares, as such, are designated always as "beneficial interests *in such property*," thus pre-

serving in every clause of the act prescribing the rates of taxation a clear distinction between the separate legacies and shares and the whole amount of the property held in charge or trust out of which they arise.

The words "whole amount of" necessarily convey the idea of an aggregation or combination of things so as to constitute one body composed of all the parts. If a single legacy or share had been intended as the subject of valuation or as the measure of the tax, it is inconceivable that Congress should have employed the words in the plural, and then followed them by the plain provision that the whole amount of such personal property should be ascertained in order to determine whether the tax or duty should or should not be imposed, and to determine, if imposed, what the rate should be.

Having classified the beneficiaries and fixed the rates of taxation in cases where the whole amount of personal property shall exceed in value ten thousand and shall not exceed twenty-five thousand dollars, the act provides that :

"Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the

sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the *amount or value of said property* shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the *amount or value of said property* shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the *amount or value of said property* shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three."

Again we ask, what is referred to by the words "amount or value of said property" in this clause? It seems to us there can be but one answer: It is the amount or value of the same property referred to in the clause which designates the subject of taxation, and in the one which next precedes the classification of the beneficiaries; that is, the whole amount or value of the personal property held in charge or trust for the payment of legacies or distributive shares, or the whole amount or value of the personal property out of which they arise.

The rates referred to in the clause last quoted, and which are to be multiplied on account of the greater value of "said property," are the rates prescribed in the previous part of the act, where they are clearly regulated by the value of the whole amount of the personal property. In the absence of all evidence to the contrary, it must be conclusively presumed that Congress intended to apply the same rule of progression in this clause. The clauses are so connected by their phraseology and in their purpose that they must be accepted as constituting a single plan or scheme of progressive taxation, in which the aggregate value of the whole property is adopted as the measure of the tax or duty to be imposed. The rule prescribed in cases where personal property is valued between \$10,000 and \$25,000 was not intended to be abandoned in cases where the value exceeded that amount. Why should a share of \$10,000 taken out of an estate not exceeding \$25,000 be taxed, while a share of \$25,000 taken out of an estate valued at \$5,000,000 is not taxed? This result would follow if the court should hold that the words "amount or value of property," used in the last clause, do not mean the same as the words "the

whole amount of said property" used in the other clause, to which it refers in fixing the progressive rates.

Under the first clause prescribing the rates, it is clear that, if the whole amount of the property exceeds \$10,000 in value, every legacy or distributive share is taxed, no matter how small it may be; but if the words used in the last clause do not mean the same thing, but are to be so construed as to make the value of each share the measure of the rate in cases where the value of the whole personal property exceeds \$25,000, then every share not exceeding that amount in value, received out of such property will be exempted, because the only provision in the act imposing any rate of taxation upon property or upon shares not exceeding \$25,000 in value, is the first paragraph describing the rates, and these rates apply only to such shares as are taken out of estates valued at not less than \$10,000 nor more than \$25,000.

The only words in the act that could possibly be even plausibly relied upon to sustain a different construction from that we are insisting upon are, "passing, after the passage of this act, from any person possessed of such property, either by

will * * * to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise," etc., etc. There are two reasons, either of which seems to be conclusive, why these words cannot be held to refer to each separate legacy or distributive share. In the first place, the words quoted were not intended to describe or designate the amount of the property which was to be included in the valuation for the purpose of taxation, but were used only for the purpose of exempting from taxation property of decedents actually held in charge or trust at the time of the passage of the act. The section begins by providing that "any person or persons having in charge or trust as administrators, executors or trustees, any legacies or distributive shares arising from personal property," etc., etc. This provision speaks in the present tense, and if the act had contained no explanatory clause, the tax or duty would have attached at once to all the legacies or distributive shares, or all the personal property out of which they arose, *then* held in charge or trust; but such was not the purpose of Congress, and, consequently, a provision was inserted which made it clear that it was intended to tax only such shares or property

as might pass after the passage of the act. In order to present this part of the act in its strongest possible form in opposition to our contention, let us reconstruct it by placing the words "passing after the passage of this act" immediately after "any legacies or distributive shares." It will then read :

"Any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares, passing after the passage of this act, * * * arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of \$10,000 in actual value," etc., etc.

In the second place, if the words quoted are to be so construed as to designate or describe the legacies and distributive shares, they expressly refer to the *whole amount* or value of such shares, and not to each one separately. In whatever intelligible form the provision may be put, the conclusion is inevitable that it was intended to value the whole property, and, if the value of the whole exceeded \$10,000, the tax or duty was to be imposed at the progressive rates thereafter prescribed in the act.

There is nothing in the act to show that it was

the purpose to exempt each legacy or share, or any legacy or share, not exceeding ten thousand dollars in value, if it was taken out of an estate exceeding that value, or to show that it was the purpose to make the value of any single legacy or share the measure of the rate of taxation. The words "whole amount of said property" are nowhere used in such connection with other language as to justify the conclusion that they were intended to designate a single share or legacy, and, to give them that construction would, it seems to us, be inconsistent, not only with the specific terms of the act, but with its general structure and evident purpose. If it is the value of the whole that determines whether there shall be any tax, it must be the value of the whole that determines the rate, for the two things are provided for in substantially the same language, and must therefore be dependent upon the same conditions. We are unable to see upon what ground it can be said that the same words do not mean the same thing when repeatedly and carefully used in the same act in reference to the same subject matter. But, if the exemption provided for in the act applies to each legacy or distributive share, and not to the personal prop-

erty as a whole, the question still remains whether a legatee or distributee who receives more than ten thousand dollars in value is entitled to any exemption at all? The act does not provide for the taxation only of values in excess of ten thousand dollars, but for the taxation of the entire value if it exceeds that sum. The consequence is that the uniformity required by the Constitution cannot be secured by holding that the exemption applies to each legacy or share, because one beneficiary who receives ten thousand dollars would pay no tax, while another beneficiary belonging to the same class who receives ten thousand five hundred dollars out of the estate of the same decedent would pay a tax, not merely on the five hundred dollars, but on the entire amount of his legacy. Admitting that Congress possesses the power to classify, and conceding, for the purposes of the present argument, that the classification made in this act is a proper one, we insist that the constitutional rule of uniformity requires that all the constituents of the same class who receive the same kind of property must be taxed alike.

But if the tax is "imposed upon each of the legacies," as the question put by the Court seems

to indicate may be the case, and is measured by the value of the share, why is it not clearly a direct tax on the property, or on the owner in respect of the property which, at the time the tax attaches, belongs absolutely to him under the laws of the State or Territory? The fact that the thing taxed, or in respect of which the tax is imposed, is called a "legacy" or "distributive share" cannot affect the character or incidence of the tax; nor can the character or incidence of the tax be affected by the fact that the property was acquired by the owner under a will or under the inheritance laws. If the tax or duty is not imposed on the privilege of transmitting the property, or on the privilege of receiving it, then it is unquestionably imposed on the property itself, or on its owner in respect of the property, for there is nothing else upon which it can possibly be imposed.

The executive department charged with the administration of this statute has from the beginning given to its provisions the same construction upon which we are now insisting. On the 15th of September, 1898, the Commissioner of Internal Revenue, in answer to a question

transmitted from the office of the Collector at Philadelphia, said:

" Mr. Fausset also asks if tax is to be computed on the whole amount of the estate or on the amount of each share. He instances the case of a person leaving by will a personal estate worth \$60,000 to his four children. He asks if the gross amount is to be divided by four and the tax computed at the rate of 75 cents on every \$100, or whether the value of the estate in its entirety is to be taken and the tax computed at the rate of \$1.12½ on the \$100.

" In answer, I have to say that the rate of tax is to be determined by the value of the whole amount of the personal property passing to an executor, or to beneficiaries direct. In the case specified, where the amount exceeded \$25,000 and did not exceed \$100,000, the rate of tax under each share would be \$1.12½ on each \$100 of clear value. * * *

" In conclusion, you state that you are 'unable to determine whether it is the intention of the act to in all cases exempt the sum of \$10,000, making the tax really on the excess of such amount.'

" In answer, I have to say that the sum of \$10,000 is exempt from taxation only in cases where the whole value of the personalty does not exceed \$10,000. If the personal property exceeds \$10,000 in value, the

tax accrues, though the aggregate amount of the separate shares distributed may fall considerably below \$10,000, owing to the deduction of expenses of distribution."

Syn. Tr. Dec. No. 20,061, 1898, Vol. 2,
P. 559.

The ruling made in the last sentence of this decision was afterwards abandoned, and the value of the whole amount of personal property held for the payment of shares, after deducting expenses of distributing, was adopted as the measure of the rate. On December 15, 1898, the Commissioner wrote the Collector at Omaha, Nebraska:

"This office is in receipt of a letter from Mr. M. B. Stuart, Lincoln, Nebr., under date of the 1st instant (who has to-day been referred to you), stating that his mother died in Connecticut on the 18th of last June; that the will was offered for probate in September, and asking whether or not said estate is subject to legacy tax.

"In reply, you will please inform him that, where the whole amount of personal property exceeds \$10,000 in actual value, passing from any person dying on or after June 13, 1898, taxes accrued thereon, and should be paid before distribution to the legatee, under section 29 of the war revenue act."

Syn. No. 20,437, 1898, Vol. 2, p. 1033.

Writing to the Collector, at Covington, Ky., December 15, 1898, he said :

“ You will please inform him that it is imperative that the return be made on the ‘ whole amount ’ of personal property passing from a person dying on or after June 13, 1898.” (see Regulations, Series 7, No. 3, revised pp. 4 and 5, for penalty for failure or neglect to deliver to Collector statement, etc.).

“ The fact that the legacy left to the widow is exempt from tax does not relieve the administrator or executor from making return to Collector, etc., of the whole amount of personal property passing under the will.”

Syn. No. 20,447, 1898, Vol. 2, p. 1042.

In a general letter of instructions to Collectors, dated January 14, 1899, the Commissioner said :

“ Upon the death of any person possessing at the time of death personal property, the whole amount of which remaining, after deduction of legal debts for distribution to legatees and distributees, exceeds in actual value the sum of \$10,000, such personal property will be regarded as having passed to the administrators, executors or trustees, and these officers will proceed to ascertain as soon as possible the whole amount of the decedent's personal property to be distributed to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise.

"The appraised value of the whole personal property of the decedent at the time of death should be first ascertained and stated in the return on Form 419, revised. The clear value of each legacy will be stated in the proper column, and the total of this column will equal the amount given as the appraised value of the personal estate. If, however, this total is less than the amount of the appraised value of the personal estate, the items which make up the difference should be furnished on a separate sheet of paper."

Syn. 20,548, 1899, Vol. 1, p. 111.

On the 18th of July, 1899, the Collector at Rochester, N. Y., was advised by the Commissioner that :

"The whole amount of personal property left for distribution after payment of legal debts and expenses determines the rate of tax imposed on legacies and distributive shares, under section 29 of the act of June 13, 1898, without regard to the amount or value of each legacy or share."

Syn. 20,587, 1899, Vol. 1, p. 163.

In response to questions asked by the Collector at Pittsburg, Pa., the Commissioner wrote, April 13, 1899 :

"Answering his contention that the personal property going to the widow is not to be included in making up the total value of

the estate for the purpose of taxation, I will say that the fact that a legacy going to the wife of testator is by statutory provision exempt from tax does not alter the further plain fact that such a legacy arises from personal property that is part of the 'whole amount' of personal property passing by the terms of the will, and in the opinion of this office it must be included with the other personal property in order to determine whether the entire amount passing is sufficient to subject to tax the other legacies passing under the will. To thus include the exempted legacy does not impair in any manner the value of the widow's interest under the will or deprive her of the full benefit of the exemption.

"To hold that it is not the whole amount of personal property passing from the decedent that is to be taken into calculation, but only the *whole amount so passing that is 'taxable,'* would be to read into the law words that, if such had been the intent of Congress, would have been used by them.

"As to the effect of the ruling which Mr. Church points out, that 'if a decedent's estate amounted to \$100,000, and he bequeathed it all to his wife with the exception of some specific bequests of \$2,000 or \$3,000 to others, it would compel the latter to pay just double the amount of taxes than if the decedent's estate was only valued at \$15,000, and all but \$2,000 or \$3,000 had been bequeathed

to his wife,' the answer is that, by the provisions of the act, *the rate of tax on legacies arising from large estates being made higher than on those arising from smaller estates*, there appears to be no reasonable ground for such a construction of the law as would result in the *escape from taxation of all legacies arising from the personal property of a rich estate* where the testator saw fit to bequeath his property to his widow, except an amount of \$10,000 or less, given as legacies to others."

Syn. 20,950, 1889, Vol. 1, pp. 695-6.

Under the act of 1864, all legacies and distributive shares held in charge or trust, and "arising from personal property, where the whole amount of such personal property, as aforesaid, shall exceed the sum of \$1,000, passing, after the passage of this act," etc., were subject to the tax or duty, and the official and practical construction was that the exemption did not apply to the legacies or distributive shares, but that, if all the shares exceeded \$1,000 in value, all were taxable, without regard to the value of each one. This construction of the statute was never questioned so far as we know, but was so well settled that Congress, in 1866, in order to prescribe a different rule for the minor children of a decedent, amended Section 124 of the act, by providing that :

"Any legacy or share of personal property passing, as aforesaid, to a minor child of the person who died, as aforesaid, shall be exempt from taxation under this section, unless such legacy or share shall exceed the sum of \$1,000, in which case the excess only above that sum shall be liable to such taxation."

14th, U. S. S., page 140.

As to all other beneficiaries, neither the statute nor its construction was ever changed while the act remained in force.

In conclusion, we respectfully submit :

1. That the value of the whole amount of the personal property held in charge or trust by the executors, administrators or trustees—that is, the value of the whole amount of the personal property out of which the legacies and distributive shares arise—determines whether the tax shall or shall not be imposed.

2. That, if the value of the whole amount of the *same property* exceeds ten thousand dollars, then every part of it constituting a legacy or distributive share, except the share of a husband or wife, is taxed at the progressive rates thereafter prescribed; and,

3. That the rates of taxation are regulated throughout the act according to the value of the *same property* designated in its first clause.

J. G. CARLISLE,

For Appellants and Plaintiffs in Error.

Of Counsel:

WHEELER H. PECKHAM, PETER B. OLNEY, WILLIAM EDMOND CURTIS, CHARLES H. OTIS, WARD B. CHAMBERLIN and GEORGE F. CHAMBERLIN.

Supplemental Brief for Appellants and Plaintiffs in Error.

The progressive rate of taxation contained in the last paragraph of section 29 of the act is graded according to the value of the whole personal estate of the decedent, irrespective of the value of the legacy or beneficial interest of the legatee or next of kin.

In construing this section it must be borne in mind that like many other parts of the War Revenue Act it is adapted from the internal revenue law passed at the time of the Civil War. Sections 29 and 30 is almost a literal copy of the legacy tax of 1864 (13 U. S. Stat. at Large, pp. 285, 286), except for the following changes:

(1) In the first paragraph the words in the act of 1864 "where the whole amount of such personal property as aforesaid shall exceed the sum of *one thousand dollars*," are changed to read "where the whole amount of such personal property as aforesaid shall exceed the sum of *ten thousand dollars*."

(2) The following words *are added* at the end of the first paragraph: "*Where the whole amount*

of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be."

(3) The tax, instead of being at the rates of one, two, four, five and six dollars for every hundred dollars in value of the interests of the members of the various classes in paragraphs "First," "Second," "Third," "Fourth" and "Fifth" of Section 29, is at the rate of seventy-five cents, one dollar and fifty cents, three dollars, four dollars and five dollars "for each and every hundred dollars of the clear value of such interest."

(4) The following paragraph *is added* at the end of the section ;

" Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half ; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two ; and where the amount or value of said property

shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rate of duty *shall be multiplied by two and one-half*; and where *the amount or value of said property* shall exceed the sum of one million dollars such rates of duty *shall be multiplied by three.*"

In Section 30 the word "collector" is used in place of the word "assessor" in the former act.

The primary classification based upon the degree of relationship of the beneficiary to the decedent remains precisely as it was in the act of 1864 with the slight changes of rate just referred to. Section 29 is printed in full in Appendix B annexed, with the changes from the Act of 1864 indicated.

The Act of 1864 established a classification based solely upon the degree of kinship between the legatee and the testator, and based, as we may assume for the argument upon a distinction between the members of the various classes which had a just and proper relation to the subject matter of the tax, be that subject matter the legacy itself or the right or the privilege of succession. That act taxed every legacy "where the whole amount of such personal property"—*i. e.*, the estate in the hands of the executors from

which the legacies arose—exceeded the sum of one thousand dollars. If the whole estate did in fact exceed one thousand dollars, every legacy, whatever its amount, was taxed at a rate which was not in any way dependent upon the amount of the legacy, but solely upon the relationship of the legatee, with the proviso that all legacies or property passing to the husband or wife should be exempt.

In the Act of 1898, however, the general language of the first paragraph of Section 29, imposing a tax upon "any person" having in charge any legacies or distributive shares "*arising from personal property, where the whole amount of such personal property shall exceed the sum of ten thousand dollars,*" is, by the phrase at the end of the first paragraph, limited to those cases only "*where the whole amount of said personal property shall exceed in value ten thousand, and shall not exceed in value the sum of twenty-five thousand, dollars.*"

All the paragraphs numbered "First," "Second," "Third," "Fourth" and "Fifth," in which the primary classification upon the basis of kinship is contained, are controlled by this phrase, and hence apply only to estates of between

\$10,000 and \$25,000. We here the state of the decedent is between these limits every legacy or beneficial interest is taxed, whatever its value. Obviously, in an estate of less than \$25,000 no legacy can exceed that amount; but, however small the legacy may be, if the whole amount of personal property in the hands of the executor, from which the legacy arises, is between the limits stated, the legacy is taxed according to the kinship of the various classes of legatees. Each member of any class is taxed at the same rate upon his legacy. The variation in the rate has, however, no relation whatsoever to the value of the legacy, but is determined solely by the relationship of the legatee.

If, then, we eliminate for the moment all reference to the subsequent clause containing the progressive or graded rates, we find in the section a complete scheme for taxing all legacies, whatever their amount, arising from estates of between \$10,000 and \$25,000 in value. A careful distinction is made and preserved throughout between the entire estate in the hands of the executor, which is termed "the whole amount of such personal property," "such property," "the whole amount of said personal property," and

again "such property," and the legacies or distributive shares of legatees or next of kin, which are spoken of as "legacies or distributive shares arising from personal property," "beneficial interest in such property" and "such interest"—words general enough to include in addition to legacies and distributive shares the beneficial interest of a *cestui que trust* in property in the hands of a trustee.

But, as we have said, the section so far does not purport to impose a tax upon any interest or legacy, whatever its value, where the whole amount of the decedent's property is greater in value than \$25,000. That is reserved for the last paragraph by which the progressive rates are enacted.

There is not a word in the paragraphs fixing the initial rates based on kinship to lead one to infer that such rates are intended to apply to legacies of any particular value; on the contrary, they apply by the terms of the first paragraph to all legacies where the whole property in the hands of the executor is between \$10,000 and \$25,000. While legacies of \$10,000 or less are not taxed where the whole property is \$10,000 or less, when it is over \$10,000 and less than \$25,-

ooo, every legacy from \$1 to \$25,000 is taxed and the rate is determined solely by the degree of kinship of the legatee.

What then is the meaning of the last paragraph of the section containing the progressive rates? We insist that it can have only one meaning; that is, that the rates are graded by the size of the whole personal property in the hands of the executor from which the legacies arise. The question hinges upon the meaning of the words "said property" occurring four times in similar connection in the phrase "where the amount or value of said property shall exceed the sum of \$25,000, but shall not exceed the sum or value of \$100,000," etc.

These words, "said property," must necessarily relate back to the "property" which has been already described in the introductory part of Section 29 as the general subject matter of the tax, that is to say, the entire amount of personal property in the hands of the executor out of which the legacies arise. But it may be contended that, while the words "where the whole amount of said personal property shall exceed in value \$10,000, and shall not exceed in value the sum of \$25,000," refer to the entire

estate out of which the various legacies arise, yet that the words "amount or value of said property" in this last paragraph imposing the progressive rates refer to the separate legacies.

Let us look at the whole act giving this construction to these words: If the words "said property" mean "any legacy or distributive share" so that this last paragraph is to be construed as if it read:

"Where the whole amount or value of *any legacy or distributive share* shall exceed the sum of \$25,000, but shall not exceed the sum or value of \$100,000, the rates of duty or tax above set forth shall be multiplied by $1\frac{1}{2}$; and where the amount or value of *any legacy or distributive share* shall exceed the sum of \$100,000, but shall not exceed the sum of \$500,000, such rates of duty shall be multiplied by 2; and where the amount or value of *any legacy or distributive share* shall exceed the sum of \$500,000, but shall not exceed the sum of \$1,000,000, such rates of duty shall be multiplied by $2\frac{1}{2}$; and where the amount or value of *any legacy or distributive share* shall exceed the sum of \$1,000,000 such rates of duty shall be multiplied by 3."

Then under this construction we have in the act a most extraordinary and purely arbitrary clasification, for while the initial rates based upon

kinship are imposed upon every legacy, however small, where the whole estate is between \$10,000 and \$25,000, yet, where the whole estate is over \$25,000 and the progressive rates are imposed according to the size of the legacy, there is no tax on any legacy, interest or distributive share unless its value is greater than \$25,000.

We would thus have an act which would first declare in plain unambiguous words that all legacies are taxed where the whole amount of personal property from which they are derived is greater than \$10,000, this would fix the rate of taxation upon all beneficial interests of legatees derived from estates of between \$10,000 and \$25,000 only, without any reference to the amount or value of the legacy, and then establish a third classification based upon the value of the legacies, affecting not all legacies, but only legacies of from \$25,000 to over \$1,000,000. Under this construction take as an instance an estate of \$100,000 divided into five legacies or distributive shares of \$20,000 each. These legacies could not be taxed at any of the rates of $\frac{3}{4}$, $1\frac{1}{2}$, 3, 4, and 5 per cent., for those rates apply only to legacies arising out of a whole amount of personal property" in the hands of an executor of between

\$10,000 and \$25,000 in value. They could not be taxed at any of the progressive rates, for those rates would apply only to legacies of over \$25,000, and each of these legacies is only of \$20,000 in value. And so a testator having an estate of \$1,000,000 might escape the entire tax by bequeathing 41 legacies, each under \$25,000. We shall not waste time by multiplying instances of the gross inequalities and absurdities which would follow from this construction.

We do, however, insist that if the words "amount or value of said property" in this paragraph refer to the separate legacies or shares, the construction we have just made of the whole act cannot be avoided, and every legacy of less than \$25,000 would be exempt, except only where the whole estate was between \$10,000 and \$25,000, when every legacy, however small, would be taxed. Such a result needs only to be suggested and proved to be the necessary result of that construction to carry its complete refutation, but there are certain considerations which remain to be urged against it. First and most important is the point that it violates the obvious intent and purpose of the act, to tax every legacy or distributive share where the whole amount

of personal property from which the legacy is derived is more than \$10,000; second, it violates the ordinary rule of grammatical and legal construction that a word once defined in a statute must bear the same meaning throughout the act, unless such meaning does violence to the context; third, the practical effect is to exempt an enormous amount of property from taxation; whereas, by the construction which we adopt, the purpose of the act is carried out and every legacy or share taxed where the estate is over \$10,000 in value, and, finally, the language used is too plain to admit of any serious question; and, where the legislative body has used apt and definite words, it is not the province of any court to give these words a forced and unnatural construction.

We may further suggest that the use of the words "whole amount of such personal property," instead of the words "whole value of the personal estate of the decedent," was intentional, and is a clear recognition by Congress of the just principle that only what remains of an estate for the payment of legacies—that is to say, the balance for distribution after the payment of debts and expenses of administration—should be

taken as the basis of assessment, and, if such balance should not exceed \$10,000, no tax should be charged. Certainly, when viewed in this light, the phrase "whole amount of such personal property" is an apt and short method of designating this balance, which must otherwise be designated by some such phrase as "the whole value of the personal estate of the decedent after payment of debts and expenses of administration." The words "whole amount of personal property" are the same as those used in the Act of 1864, where their meaning is entirely free from doubt.

We can conceive of a third construction being suggested for Section 29; that is, that the words "where the whole amount of said personal property," in the last clause of the first paragraph, mean not the whole amount of personal property from which the legacies arise, but the separate legacies or shares themselves, and that the words "amount or value of said property," in the subsequent paragraph, establishing the graded rates, also mean the separate legacies or shares. Adopting, for the argument, this construction, and substituting the words "any legacy or distribu-

tive share," this clause and the last paragraph would read :

"Where *the whole amount of any legacy or distributive share* shall exceed in value \$10,000, and shall not exceed in value the sum of \$25,000, the tax shall be," etc.

"Where the amount or value *of any legacy or distributive share* shall exceed the sum of \$25,000, but shall not exceed the sum or value of \$100,000, the rates of duty or tax above set forth shall be multiplied by one and one-half," etc.

But this last construction, we insist, cannot be adopted because, first, it violates the ordinary natural meaning of the language to say that the words "the whole amount of said personal property," which relate back to the property just described—that is, the whole amount of personal property in the hands of the executors from which the legacies arise—mean the same thing as the separate legacies. It is tantamount to saying that the whole is equal only to one of its component parts. Second, such a construction would establish a classification of all legacies *from \$10,000 to over \$1,000,000, but would exempt all legacies of less than \$10,000.* This would be directly contrary to the language of the first few

lines of the first paragraph, which say that *all legacies* where the whole amount of personal property from which they are derived is over \$10,000 shall be subject to that tax. Third, if the word "property" means "legacy" it is inconceivable that the careful distinction should be made in the paragraphs numbered "First," "Second," "Third," "Fourth" and "Fifth" between the "property" in the hands of the executor and the "interest in such property" of the legatee or next of kin.

In short, we submit that there is only one construction under which the whole act can be made consistent and by which effect can be given to every word. That is, that the rate is graded according to the size of the whole estate, and, where the whole estate is over \$10,000, every legacy is taxed at a rate based primarily upon the relationship of the legatee, and secondarily upon the value of the whole amount of personal property in the hands of his executors, administrators or trustees from which legacies and distributive shares arise.

In Appendix A we have submitted certain extracts from the debates in Congress (Congressional Record, Vol. 31, Part VI., May 20, 1898)

when the tax was under discussion, which make it it entirely clear that the intent of that body was to impose the highest rate of tax upon the largest estates without regard to the value of the legacy. In Appendix B we have set forth Section 29 of the act with the words added to the Act of 1864 (13 U. S. Stat. at Large, pp. 285, 286) printed in heavy-faced type and the words omitted from it in italics and enclosed in brackets.

HENRY M. WARD,

For Appellants and Plaintiffs in Error.

APPENDIX A.

Senator LODGE. There is another point that I desire to ask about. I may be wrong in my interpretation of the bill, but what appears to me to be the case is that if a man inherits \$100,000 from an estate of \$200,000 he pays one tax. If he inherits \$100,000, exactly the same amount, from an estate of \$1,000,000, he pays a much heavier tax. The man who inherits \$100,000 from the estate of \$1,000,000 may be a poor man, and the man who inherits \$100,000 from the estate of \$200,000 may be a rich man, and yet the man inheriting the \$100,000 from the estate of \$1,000,000 pays two and a half times as much; that is, the tax appears to be levied upon the original estate without any reference to the beneficiaries. I do not see why \$100,000 in a legacy should pay more coming from an estate of one size than coming from an estate of another size.

Mr. WOLCOTT. I should like to ask the Senator from Massachusetts if he does not believe, in view of some of the enormous accumulations of fortunes in this country, out of which the personal property pays practically nothing in taxation during the life of the owner, it is inequitable that a personal estate of \$5,000,000 should pay a greater sum proportionately to the Government than an estate of \$20,000?

Mr. LODGE. That opens up the whole question of a graduated tax. I believe, as a matter of sound taxation, the object is to tax the dollar and not the man. I believe the dollar should be taxed, whether it is \$1 in twenty thousand or \$1 in five million.

Now, I favor an inheritance tax as a principle of taxation. We have an inheritance tax on collateral inheritances in my own State, from which last year we collected over \$500,000. It is only applied to collateral inheritances, but it is an important branch of revenue in my State. I think it was a wisely-imposed tax, that it is a

wise law, and very possibly it might be carried further. I think also that it is a tax which ought to be left to the State and not taken by the United States. But I fail to see the justice of taxing a man who gets perhaps \$5,000 as a small bequest from an estate of a million dollars. Perhaps it is all that he has. When that is left him by a person possessing a million-dollar estate, why should he pay two and a half times as much tax as a man who gets precisely the same amount from a smaller estate?

I agree it seems on the surface proper that a large estate should pay more than a small estate, and if the tax was graded in that way it might be open to less objection. But this is graded so as to tax the legacies on a different scale. The object is, of course, to reach the property; and it seems to me that where the legacy is the same, a man should not be forced to pay more on the same amount because he happens to receive his legacy from a larger estate.

* * * * *

The PRESIDING OFFICER. The question is, first, on the amendment of the Senator from Colorado [Mr. WOLCOTT] to the amendment of the committee.

Mr. WOLCOTT. To insert "ten" instead of "five."

Mr. LODGE. I thought that had been disposed of.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The SECRETARY. In line 20, page 66, strike out "five" before "thousand" and insert "ten;" so as to read:

That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of \$10,000 in actual value, passing, after the passage of this act, from any person possessed of such property, etc.

The amendment to the amendment was agreed to.

Mr. FAULKNER. And on page 67, line 6, the same amendment is to be made.

The SECRETARY. On page 67, line 6, strike out "five" and insert "ten" before "thousand" so as to read:

Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be.

MR. CHANDLER. I wish to inquire whether the limitation on the amount is a limitation as to the whole estate or as to the individual legacy.

MR. WOLCOTT. It is only the personal estate, I will say to the Senator.

MR. CHANDLER. The provision is:

Where the whole amount of said personal property shall exceed in value \$10,000, and shall not exceed in value the sum of \$25,000, the tax shall be.

Does that mean the whole estate, or only the individual legacy?

MR. WOLCOTT. The whole estate.

MR. CHANDLER. Suppose a man has \$100,000. He cannot give ten legacies of \$10,000 each without paying the tax?

MR. WOLCOTT. It applies to the whole estate.

MR. CHANDLER. If the whole estate which is bequeathed by the testator should amount to \$10,000, is every legacy, however large or small, taxable?

MR. WOLCOTT. Certainly. The amount of the tax on it is determined by the totality of the personal property left. If it be \$10,000, then it is taxable, however small or large the legacy may be.

MR. SPOONER. It might be a million dollars.

* * * * *

MR. WOLCOTT. The experience of the last twenty-five years of this country has demonstrated without a doubt that live men with large properties can always evade the taxgatherer so far as their personal estate is concerned. The Senator knows, and I know, of men worth a million dollars of personal property who pay

practically no taxes whatever. In the great State of New York a bill to tax inheritances was vetoed by its governor because it would drive people out of that State into New Jersey and other States for a legal residence. It is because the law cannot reach such persons when they are alive that we propose to enact into law now a general provision which will reach every State in the Union, and which will say that these great estates shall not be passed down without the Government getting its fair share by the imposition of a tax on these great properties which it has protected through all these years. That is why it was done. If we could reach the living man we would do so, but we cannot. The tax collectors have not been able to do that for years, and the Senator must know that.

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MR. WOLCOTT. Is the Senator aware that this tax was on the statute books for years and was very admirable in collecting revenue during war times?

MR. ELKINS. We had a great big war on hand then, no such an affair as this.

MR. GORMAN. I should like to ask the Senator from Colorado where he finds the taxes to which he refers? Were they imposed in 1862? I have been unable to find any such provision.

MR. WOLCOTT. It was in 1864, and the provision is reproduced word for word here, except that we have made the legacy tax higher for the larger estates and lower upon smaller estates. Otherwise it is the same as the law of 1864.

APPENDIX B.

LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL
PROPERTY.

SEC. 29. That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of **ten thousand** [*one thousand*] dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say : **Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty five thousand dollars the tax shall be :**

“First : Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister to the person who died possessed of such property as aforesaid, at the rate of **seventy-five cents** [*one dollar*] for each and every hundred dollars of the clear value of such interest in such property.

“Second : Where the person or persons entitled to any beneficial interest in such property shall be the descendent of a brother or sister of the person who died possessed, as aforesaid, at the rate of **one dollar and fifty cents** [*two dollars*] for each and every hundred dollars of the clear value of such interest.

“Third : Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant

of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of **three** [*four*] dollars for each and every hundred dollars of the clear value of such interest.

"Fourth: Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of **four** [*five*] dollars for each and every hundred dollars of the clear value of such interest.

"Fifth: Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of **five** [*six*] dollars for each and every hundred dollars of the clear value of such interest:

"*Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person died possessed, as aforesaid, shall be exempt from tax or duty.

"Where the amount of value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum of value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount of value of said property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three."